RECENT IMPORTANT DECISIONS

ATTORNEYS—DISOBEDIENCE OF ORDER OF SUSPENSION—WHAT ACTS CONSTITUTE.—Defendants had been suspended from practice "in all the courts of this state" for one year. During suspension they had continued to maintain a law office with the usual signs on the doors and windows, used envelopes and stationery with their names printed thereon as Attorneys at Law, and permitted their names to be inserted as attorneys at law in telephone and city directories. Defendant M had caused the preparation of a complaint, affidavit, and bond in attachment under his direction and had them filed in a suit in the District Court by one K, a licensed attorney, and had represented A, administrator of an estate, before the Probate Court. Defendant W drew up a mortgage, charged a fee therefor, examined abstracts of title, passed upon them, and appeared at a hearing before the State Engineers, there examining witnesses and interposing objections to evidence. *Held,* that these acts constituted contempt of court; that the act of M in appearing before the Probate Court alone constituted a contempt of court. *State* v. *Marron; Same* v. *Wood* (N. Mex. 1917), 167 Pac. 9.

The cases of *In re Duncan* (1909), 83 S. C. 186, 18 Ann. Cas. 657, 65 S. E. 210, 24 L. R. A. (N. S.) 750; *State* v. *Richardson,* (1910), 125 La. 644, 51 So. 673; and *In re Lizotte* (1911), 32 R. I. 386, 79 Atl. 960, 35 L. R. A. (N. S.) 794, seem to be the only other reported cases which have been decided on this question. They are all in accord with the principal case. In *State* v. *Richardson, supra,* and *In re Lizotte, supra,* the acts held to constitute contempt were almost identical with those in the principal case. The main defense in these cases have been that the effect of an order of suspension was only to deprive an attorney of such rights and powers as the court had conferred upon him; that since a layman could have done the acts alleged the defendant has not violated the order of the court. There are several dicta which seems to support this argument. See *State* v. *Swan* (1899), 60 Kans, 461, 56 Pac. 750; *Danforth* v. *Egan* (1909), 23 S. Dak. 43, 119 N. W. 1021, 139 Am. St. Rep. 1030, 20 Ann. Cas. 418. See also the vigorous dissent in the principal case. The courts, however, in the above cases have met this argument by saying that in holding himself out as an attorney at law the defendant was holding himself out as an officer of the court, which the court's order of suspension had expressly declared he no longer was. In the principal case M was held guilty of contempt of court in appearing before the probate court under a statute construed to give the court power to extend its order to include practice before these inferior courts. The point is expressly decided without reference to a statute in *In re Duncan, supra.* The fact that his act is appearance in an inferior court instead of advising clients in an office as an attorney would seem not to justify a distinction, since in both cases the defendant has acted not as a layman but as an officer of the court. Since the defendant's contempt of court consists in holding himself out as an attorney at law the cases seem to involve the same prin-

ciple as in such cases as *In re Bailey* (1915), 50 Mont. 365, 146 Pac. 1101, Ann. Cas. 1917 B, 1198, in which an unlicensed person was held guilty of contempt of court in holding himself out as an attorney at law.

BANKRUPTCY—PREFERENCE—MEANING OF "INSOLVENT."—In an action in a state court by a trustee in bankruptcy to recover for the estate a preferential transfer, the court refused an instruction requested by plaintiff that if defendant "was not able to pay its debts in due course of business it would be deemed insolvent." *Held,* error to refuse such instruction. *Simpson* v. *Western Hardware & Metal Co.* (Wash. 1917), 167 Pac. 113.

Section 1, Cl. 15, of the BANKRUPTCY ACT provides that "A person shall be deemed insolvent within the provisions of this act whenever the aggregate of his property * * * shall not, at a fair valuation, be sufficient in amount to pay his debts." Section 60a provides that "A person shall be deemed to have given a preference if, being insolvent, he has, * * * made a transfer," etc. Under Sec. 60b such preferential transfers may, under certain conditions, be recovered back by the trustee, by action in a federal or state court. It was in such a proceeding that the court in the principal case held the meaning of "insolvent" should be determined according to state law rather than by the BANKRUPTCY ACT. No authority is cited, and probably none could be found supporting such view. In view of the fact that the whole proceeding was based on the BANKRUPTCY ACT, the trustee deriving all of his powers therefrom, and preferential payments being recoverable by him solely because of the Act, it would seem almost too clear for argument that the lower court was right. In *Crancer & Co.* v. *Wade,* 26 Okl. 757, 25 Am. Bankr. R. 880, where the action was the same as in the principal case the court said that the definition of "insolvency" as fixed by the BANKRUPTCY ACT "must be strictly adhered to." And in *Summerville* v. *Stockton Milling Co.,* 142 Cal. 529, where the question was whether a mortgage was an unlawful preference under the BANKRUPTCY ACT, the court applied the definition of insolvency therein, although the other meaning had been adopted in earlier cases not involving the ACT of 1898. *In re Ramazzina,* 110 Cal. 488. Section 3a(4) declares an act of bankruptcy to have been committed if "because of insolvency a receiver or trustee has been put in charge of his property under the laws of a state * * * " There would seem to be much more excuse for following the rule of the state court as to what amounts to insolvency in cases arising under this provision than in cases like the principal case. It has been generally considered, however, that the definition in the ACT is to control such cases. *Maplecroft Mills* v. *Childs,* 226 Fed. 415. See comment in 14 MICH. L. REV. 338.

CARRIERS—INTERSTATE COMMERCE COMMISSION—SCOPE OF ORDER REGULATING INTRASTATE RATES.—An order of the Interstate Commerce Commission directed certain express companies to remove an existing discrimination against interstate commerce by ceasing to charge higher rates between Sioux City, Iowa, and South Dakota points than for substantially equal distances between such South Dakota points and five named South Dakota cities. The order undertook to give to the carriers a discretion as to the method to be